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The Murder of Colonel Charles Potter

ROBERT R. WHITE

In early October 1880, Colonel Charles Potter arrived in Albuquerque, New Mexico, during the course of an investigation of mining activity in the territory for the U.S. Geological Survey. On October 14, Colonel Potter rode horseback through Tijeras Canyon on his way to Santa Fe, some sixty miles distant, and simply vanished. His disappearance was to develop into one of New Mexico's most celebrated murder cases, and he was to have the unfortunate distinction of being the first U.S. Geological Survey employee murdered in the line of duty. Before this bloody drama ended, it would involve a host of notable individuals in the territory of New Mexico and the state of Rhode Island.

Charles Potter was born in Rhode Island on July 19, 1850.¹ It is not known what happened to his father (also named Charles), but his mother, Arazelia, married again in 1863. Her second husband was

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1. Charles Potter's place of birth is given as Newport in a newspaper clipping, dated February 5, 1881, at the Newport Historical Society (George Richardson Scrapbook #972, p. 39). His marriage certificate at the Rhode Island Department of Health lists Providence as his place of birth. However, the City Clerk's Office in Newport has no record of his birth, nor does the City Registrar or the Department of Health in Providence.

Charles C. Van Zandt, a prominent politician who was elected lieutenant governor of Rhode Island in 1873 and served as governor of the state from 1877 to 1880.²

Potter enrolled in Brown University at Providence in 1868, but soon left to complete his education by touring Europe with a private tutor. On April 4, 1872, he married Mary Minturn in Bristol, Rhode Island, and they travelled to Europe for an extended honeymoon; he was twenty-one years old and she was twenty-four.³ When Potter and his wife returned to Rhode Island, they built a fashionable villa in Newport, although they were often in Providence, the state capital, because of Potter's political appointments. He was on the personal staff of Governor Henry Howard from 1873 to 1875 and held a similar position from 1877 to 1880 during the administration of his step-father, Governor Van Zandt. It was by reason of these political appointments that Potter was given the honorary title of colonel.⁴

At some time during the late 1870s, Potter and his wife travelled to San Francisco and there he became interested in mining geology. In early 1880, Potter went to Chicago to attend to his local interests in real estate. He then went to Leadville, Colorado, to visit Ferdinand S. Van Zandt, a close friend of his (and a distant relative of Governor Van Zandt) who was involved in banking and mining in central Colorado.

While in Colorado, Potter met S. F. Emmons, a geologist with the U.S. Geological Survey, who was conducting an investigation of the rich silver mines in the Leadville area. Emmons was also in charge of a survey of precious-metals production in the Rocky Mountain area. The survey, which officially began on June 1, 1880, was under the overall direction of Clarence King and was related to the collection of census information for that year. Emmons told Potter that he needed to employ a suitable person to visit the mines of New Mexico, and

2. *The National Cyclopedia of American Biography* (New York: James T. White & Company, 1907), vol. 9, pp. 405-06.

3. Record of Marriage, Division of Vital Statistics, Rhode Island Department of Health, Providence. Mary Minturn's maiden name appears to be spelled Mintun on her marriage certificate but her tombstone at the Island Cemetery in Newport and her death certificate at the Newport City Hall give the spelling as Minturn (she died in 1910 on her thirty-eighth wedding anniversary). In contemporary newspaper accounts her name is spelled Minton.

4. Information on Potter's early life is contained in a newspaper clipping (undated, but probably February 2, 1881) in the Scrapbook Collection, Rhode Island Historical Society and in the *Newport Mercury*, February 5, 1881. The archives at Brown University reveal that Potter enrolled in 1868 but did not graduate. Some of Potter's business records are at the Newport Historical Society, but no other family records have been located.

after Potter obtained the reluctant consent of his family, he secured the position for himself.⁵

After receiving his instructions (probably at Emmons' Denver headquarters), Potter left for New Mexico and spent some months investigating the mines in the territory. He arrived in Albuquerque in early October 1880.

Potter wrote to his family from Albuquerque that he intended to ride to Santa Fe by way of the "new placers" (in the San Pedro Mountains, about thirty miles east-northeast of Albuquerque). He said that he would write to them from Santa Fe in a few days and would soon return to Denver where he would complete his report. In spite of warnings from friends about the dangers of travelling alone, Potter left Albuquerque by himself on the thirteenth of October, dressed in a corduroy suit and mounted on a fine sorrel mare. He spent that night at the cabin of a Frenchman named La Perche. As Potter was preparing to resume his journey on the morning of the fourteenth, La Perche cautioned him to be on his guard, as "two Mexican horse thieves" had passed up the canyon on the day before. Colonel Potter replied, "I have no fear; if they take me it will be at long range," indicating that he had faith in his skill with a revolver in any face-to-face confrontation.⁶

Potter was in Tijeras Canyon at noon and stopped to ask directions at the cabin of a man known as California Joe. Just by chance, a gang of bandits led by Marino Leyba was in the cabin having lunch, and when they saw the prosperous-looking traveller, they quickly decided to rob him. California Joe was told to direct Potter onto a lonely side road, and as soon as the Colonel left, Leyba took a shortcut to intercept him, accompanied by four accomplices (Pantaleon Miera, Escolastico Perea, Miguel Barrera, and Faustino Gutierrez).⁷

Leyba and his accomplices chose a location sufficiently distant from any settlement so that gunfire would not be heard. The first warning that Potter had of danger was a shot fired at him by one of the bandits.

5. J. W. Powell, *Second Annual Report of the United States Geological Survey, 1880-1881* (Washington, D.C.: Government Printing Office, 1882), pp. 44-45, 373.

6. Newspaper clipping from the Scrapbook Collection, Rhode Island Historical Society. Also see the *Santa Fe Daily New Mexican*, December 2, 1880, and Howard Bryan, "Murder mystery solved, triple-lynching followed," *Albuquerque Tribune*, January 29, 1981.

7. Accounts differ as to exactly what happened in Tijeras Canyon. The author has generally followed the description given by Marc Simmons, *Albuquerque* (Albuquerque: University of New Mexico Press, 1982), 290-93, and by the same author in *Ranchers, Ramblers and Renegades* (Santa Fe: Ancient City Press, 1984), 41-43.

\$1,000 REWARD!

The above sum of money will be paid for information leading to the discovery of the whereabouts, if alive, of

COL. CHARLES POTTER,

or if dead a reward of \$200 will be paid for the recovery of the body.

Colonel Potter was last seen on October 14th, 1880, leaving Tehera, Bernalillo county, New Mexico, on the road leading via San Antonio to the New Placers. Colonel Potter was a tall spare man, dressed in a corduroy suit, light in color, and was mounted on a fine sorrel mare, about fifteen hands high, branded N on left hip, one hind foot white.

Any information to be addressed to F. S. Van Zandt, care of General Hatch, Santa Fe, N. M.

The reward notice that appeared in Albuquerque and Santa Fe newspapers in early 1881. Courtesy Museum of New Mexico.

This first shot missed its mark, and Potter instantly drew his revolver and fired but also without effect. Another shot from the bandits brought down Potter's horse and a second shot by Potter killed the horse of Miera. A third shot from the assailants struck Potter in the body, and though wounded and dismounted, he returned the fire a third time but, again, without effect. A fourth shot from the bandits pierced Potter's brain and he fell dead.⁸ The murderers rifled Potter's pockets, piled brush over his body and his dead horse and set fire to them. They then rode away, eventually scattering to various places in the Rio Grande and Pecos River valleys. As they had intended, a curtain of silence fell over the incident—but not for long.

When Potter's family in Rhode Island stopped receiving his frequent letters, they became alarmed and began making inquiries. When no satisfactory answers were obtained regarding Potter's whereabouts, Ferdinand Van Zandt travelled from Leadville to Albuquerque to personally investigate the matter, and Governor C. C. Van Zandt placed a notice in the Albuquerque and Santa Fe newspapers offering a reward

8. Santa Fe *Daily New Mexican*, February 1, 1881.

of \$1,000 for information leading to the discovery of Colonel Potter's whereabouts if alive, or \$200 for information leading to the recovery of his body.⁹ Several army patrols, generally accompanied by Ferdinand Van Zandt, were dispatched from Fort Marcy by General Hatch to look for Potter.¹⁰ Territorial Chief Justice L. Bradford Prince, a kinsman of Governor Van Zandt, closely monitored the search and assisted in various ways.¹¹

Meanwhile, Marino Leyba, the leader of this gang of murderers, had returned to his home at Puerto de Luna, New Mexico, on the Pecos River. Leyba was twenty-three years old, weighed 180 pounds, and stood about six feet tall. He had dark blue eyes and was considered handsome; he had a slight speech impediment.¹² Charles F. Lummis, who wrote that he met Leyba in 1884 in Golden, New Mexico, described him as "a herculean Mexican of astonishing agility and almost matchless skill with the revolver—one of his favorite pastimes being to spur his fleet horse through a village, shooting off the heads of chickens as he galloped past!" Lummis said that Leyba was a known murderer, but he walked the streets of Golden as freely as anyone, and the peace officers "who came down periodically from Santa Fe to arrest him always took very good care not to find him, nor to let him find them."¹³

9. The first appearance of the reward notice in the Santa Fe *Daily New Mexican*, January 6, 1881, was accompanied by a news item calling attention to it. It should be remembered that \$1,000 was an enormous sum of money at that time, representing the value of about fifty ounces of gold.

10. Letters Sent, 1879–1895, Records of the United States Geological Survey, Record Group 57, National Archives, Washington, D.C.

11. L. Bradford Prince is described as a relative of Governor Van Zandt in a newspaper clipping in the Scrapbook Collection, Rhode Island Historical Society. Prince was descended from the Collins and Bradford families of Rhode Island, Ralph Emerson Twitchell, *The Leading Facts of New Mexico History* (5 vols., Cedar Rapids, Iowa: Torch Press, 1912), II, p. 502. Governor Van Zandt's mother was related to the same two families. General Lew Wallace was governor of New Mexico at the time of Potter's murder, but neither his official papers at the New Mexico State Records Center and Archives nor his personal papers at the Indiana Historical Society contain any mention of the incident.

12. A birth certificate, recording the birth of José Marino Leyba on July 25, 1857, has been located at Our Lady of Sorrows Church, Bernalillo, New Mexico, Steve Peters, *Incident on the Rio Grande* (Santa Fe: privately printed, 1971), 30, 39. However, the "Record of Convicts, New Mexico Penitentiary" at the New Mexico State Records Center and Archives lists Leyba's place of birth as "on the Rio Pecos." A physical description of Leyba appeared in the Santa Fe *Daily New Mexican*, March 30, 1887. The information that Leyba had a speech impediment comes from the Las Vegas *Daily Optic*, March 18, 1881.

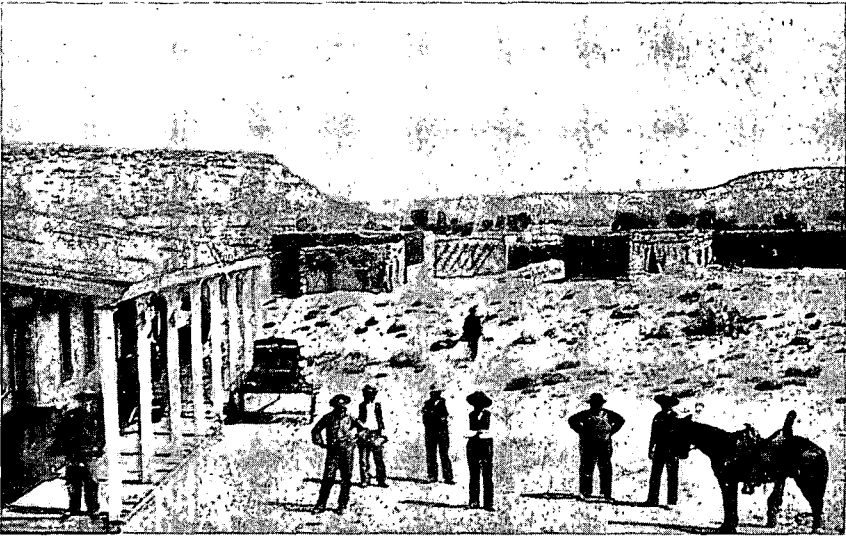
13. Charles F. Lummis, *A Tramp Across the Continent* (New York: Charles Scribner's Sons, 1892), 125.

In December 1880, however, Leyba had an encounter with a lawman that does not exactly correspond with Lummis' scenario. On December 9, Sheriff Pat Garrett and a deputy, Barney Mason, rode into Puerto de Luna with two prisoners, with the intention of delivering them to Deputy Romero and his assistants, who had ridden south from Las Vegas, New Mexico. Garrett's description of his encounter with Marino Leyba (who was still not suspected of the murder of Colonel Potter) is of considerable interest in light of later events. He related the incident in his 1882 book, *The Authentic Life of Billy, the Kid*:

I was sitting in the store of A. Grzelachowski, when Juanito Maes, a noted desperado, thief, and murderer, approached me, threw up his hands and said he had heard I wanted him and had come to surrender. I replied that I did not know him, had no warrant for him, and did not want him. As Maes left me a Mexican named Mariano Leiva [Marino Leyba], the big bully of the town, entered, his hand on a pistol in his pocket, walked up to me, and said he would like to see any d——d Gringo arrest him. I told him to go away and not annoy me. He went out on the porch, where he continued in a tirade of abuse, all directed against me. I finally went out and told him that I had no papers for him and no business with him, that whatever I did have he would not be put to the trouble of hunting me, that I would be sure to find him. With an oath, he raised his left arm in a threatening manner, his right hand still on his pistol. I slapped him off the porch. He landed on his feet, drew his pistol and fired without effect. My pistol went off prematurely, the ball striking at his feet—the second shot went through his shoulder, when he turned and ran, firing back as he went, way wide of the mark.

I entered the store and got my Winchester. In a few moments Deputy Romero came in and informed me that I was his prisoner. I brushed him aside and told him I did not propose to submit, asking him the cause of my arrest. He said it was for shooting at Leiva, and reached for my gun. I told him I had no intention of evading the law, but he could not disarm me; that I did not know what sort of mob I had struck; that one man had already deliberately shot at me, and I proposed to keep my arms and protect myself. Mason had come in, and now picked up his rifle and said: "Shall I cut the son-of-a —— in two, Pat?" I told him not to shoot, that I did not mind the barking of these curs. My friend, Grzelachowski, interfered in my defense and the bold deputy retired. I went to an alcalde the next morning, had an examination, and was discharged.¹⁴

14. Pat F. Garrett, *The Authentic Life of Billy, the Kid* (Norman: University of Oklahoma



Alexander Grzelachowski (second from right) stands in front of his store at Puerto de Luna, circa 1880. Courtesy Francis C. Kajencki and Oma Gallegos.

The sequence of events that led to a connection between Marino Leyba and the death of Colonel Potter began in late January 1881, when Bernalillo County Sheriff Perfecto Armijo learned that a gold watch resembling one owned by Potter had been pawned at J. K. Basye's loan office in Albuquerque. Sheriff Armijo and Ferdinand Van Zandt went to the pawn shop, only to find that the watch case and chain had been melted into gold bullion a day or two before. Luckily, though, the watch movement was still in the shop, and Van Zandt identified it as having belonged to Potter. Bayse's records indicated that the watch had been pawned by Pantaleon Miera on November 3, 1880.¹⁵

Miera had been lynched as a horse thief on December 29 in Bernalillo; but now, a month later, Sheriff Armijo rode the sixteen miles up the Rio Grande Valley to see what he could learn there about Miera's

Press, 1954), 107–08. (This book was ghostwritten by Garrett's friend, Ash Upson, but the last part of the book, including the passage quoted, probably closely followed Garrett's own version of his activities in late 1880 and the first half of 1881). Alexander Grzelachowski was the alcalde who ruled on the incident the next morning. Grzelachowski was a priest who first entered New Mexico in 1851 with Bishop Lamy (Francis C. Kajencki, "Alexander Grzelachowski: Pioneer Merchant of Puerto de Luna, New Mexico," *Arizona and the West* 26 [Autumn 1984], 243–60).

15. *Santa Fe Daily New Mexican*, January 30, 1881.

activities.¹⁶ He soon ascertained that Miera had been associated with another known outlaw, Escolastico Perea, who was thought to be living near Isleta Pueblo. A warrant was issued, and a posse soon brought in Perea.

Perea at first denied any knowledge of the crime, but afterward confessed that he was present when the murder was committed, though he claimed to have taken no part in it. He offered to lead the sheriff to the body and to provide the names of those involved.¹⁷

On Saturday morning, January 29, 1881, Sheriff Perfecto Armijo rode to the east side of the Sandia Mountains to find the body of Charles Potter. When it was located, it could be identified only because of the dog's-head buttons on fragments of the coat. Armijo returned to Albuquerque on the evening of January 31, not only with the Colonel's remains but with two more of the accused murderers, Miguel Barrera and California Joe.¹⁸

Word soon spread of the sheriff's return, and talk about a lynching began to be heard. However, a minstrel troupe performed in the courtroom that evening, and the large audience seemed to be in good humor. In the middle of the night, though, a vigilance committee of two hundred men, mostly Hispanic, with their faces covered by handkerchiefs, quietly approached the jail. The jailers did not interfere, and the "stranglers" went about their business with a cold efficiency. The three accused murderers were dragged outside and hanged from a wooden beam in front of the jail. The territorial newspapers gleefully reported the event under such headlines as "Dancing On Nothing" and described the criminals as having been "launched into eternity." Strangest of all was this comment in the *Santa Fe Daily New Mexican*: "Although yesterday was not a good day for hanging at Albuquerque—yet three of Colonel Potter's murderers are fully satisfied with its capabilities in that direction."¹⁹

16. *Santa Fe Daily New Mexican*, December 30, 1880, as described in Philip J. Rasch, "A Pat Garrett Item," *New Mexico Historical Review*, 36 (January 1961), 80-82.

17. *Santa Fe Daily New Mexican*, January 30, 1881. Bernalillo County Sheriff's Department records for this period have not been located and are thought to have been destroyed.

18. *Santa Fe Daily New Mexican*, February 1, 1881. Potter was buried at the Island Cemetery at Newport, Rhode Island. An announcement of the burial service was carried in the *Santa Fe Daily New Mexican*, March 5, 1881.

19. *Santa Fe Daily New Mexican*, February 1, 2, 4, 1881; most of the news about the incident was published first in the Albuquerque newspapers and then sent by telegraph to Santa Fe. A few obvious typographical errors have been corrected in these newspaper quotations.

With four men lynched, only two of the murderers, Faustino Gutierrez and Marino Leyba, were still at large. Gutierrez was captured in early February 1881 and eventually, in an effort to save his own neck, offered to show Leyba's hiding place to Sheriff Armijo. Accordingly, Gutierrez was sent in chains with a posse of four deputies to capture Leyba, who was found near Puerto de Luna and taken with little difficulty. On the journey back to Albuquerque, however, a plan to keep watch on Leyba during the night proved to be unsuccessful, and he escaped. Reports on the incident hint that Gutierrez may have been of some assistance to Leyba in his escape. The posse rode back into Albuquerque with Gutierrez on February 24 and returned him to jail. During the night, the vigilantes took him from the jail, and in spite of his pitiful cries for mercy, he was strung up from the same beam on which his three companions had met their fate.²⁰

The search for Marino Leyba now intensified. A deputy U.S. marshal and an undersheriff from Albuquerque joined a constable from Puerto de Luna in the hunt, but the outlaw learned of his danger and left the area on a stolen mare. Ten miles south of Puerto de Luna he stole another horse, this one belonging to a gentleman named Pablo Analla, who consequently joined the posse. Within a few days the posse had increased to fourteen men, who vowed to continue on the trail if it took all summer. On March 15, 1881, the posse came upon Leyba about twenty miles east of Puerto de Luna. As soon as Leyba spotted his pursuers he raised his Winchester and fired at them, but the first shot blew apart the rifle mechanism, preventing a second shot; moments later he was wounded in the left forearm, and he then threw up his hands in surrender.²¹

Marino Leyba was taken to the San Miguel County jail at Las Vegas, New Mexico. There was much talk about sending him to Albuquerque to stand trial for the murder of Colonel Potter, but ironically, this did not prove to be feasible because all of the witnesses to the murder had been lynched by vigilantes. Instead, Leyba was indicted for "assault with intent to kill and murder" Pat Garrett. For good measure, he was also indicted for assault with a deadly weapon, resisting an officer, larceny of a mare, and two counts of larceny of a horse. The indictments were all signed by Thomas B. Catron, "who represents and acts in place of an attorney general for New Mexico."²²

20. Santa Fe *Daily New Mexican*, February 25, 26, 1881.

21. Las Vegas *Daily Optic*, March 18, 1881; Santa Fe *Daily New Mexican*, March 20, 1881.

22. San Miguel County District Court records, criminal cases 1179, 1180, 1246, and 1281-1284, State Records Center and Archives, Santa Fe, New Mexico.



Sheriff Pat Garrett. Courtesy Museum of New Mexico.

Leyba came to trial in Las Vegas during August 1881 for shooting at Garrett, and the testimony presented differs somewhat from Garrett's account of the incident in *The Authentic Life of Billy, the Kid*. In his book, Garrett states that Leyba said that "he would like to see any d—d Gringo arrest him," whereas testimony at the trial revealed that what Leyba actually may have said was, "No *cabrón* like Pat Garrett can take me," which is a much more personal insult, and which probably accounts for Garrett following Leyba out on the porch and slapping him around.²³

After a two-day trial, the jury found Marino Leyba guilty of assault with intent to kill Pat Garrett and fined him \$80. Although the light sentence imposed by the jury is surprising, they may have felt that Garrett was, in some respects, the aggressive party in the incident. It is interesting to note that this trial was held just one month after Pat Garrett killed Billy the Kid; this event may also have affected the jury's decision.

In March 1882, Leyba was again brought to trial and was convicted of larceny of a horse and mare and resisting an officer, this last charge

23. Garrett, *Authentic Life of Billy, the Kid*, 107; *Las Vegas Daily Optic*, August 18, 19, 1881.

resulting from Leyba having threatened Constable Lorenzo Sanchez with a gun during the manhunt in March 1881. He was sentenced to serve seven years and one month in prison. The judge in all of the proceedings against Leyba was L. Bradford Prince, who was not only Chief Justice of the Supreme Court of the territory, but also judge of the First Judicial District Court. Judge Prince's relationship with Colonel Potter's family suggests that he may have had a conflict of interest in sitting in judgment on Colonel Potter's murderer, but no objections seem to have been raised.

In April 1882, Leyba was sent to the federal prison at Ft. Leavenworth, Kansas, where he remained for almost four years.²⁴ In March 1886, after the territorial prison had been completed in Santa Fe, he was returned to New Mexico to finish his term of incarceration.²⁵

The facts just presented about Marino Leyba's imprisonment are supported by numerous territorial documents, but they are in direct conflict with Charles F. Lummis' claim that he met Leyba in 1884 in Golden, New Mexico. Lummis' account of his conversations with Leyba in *A Tramp Across the Continent* has long been considered the most valuable first-hand description of the outlaw.²⁶ However, it must be concluded that Charles F. Lummis never met Marino Leyba, because Leyba could not possibly have been in Golden in 1884, and Lummis did not again visit New Mexico until after Leyba's death.

There are, perhaps, three possible explanations for Lummis' spurious claim to having met Leyba. The first possibility is that when Lummis walked into Golden wearing knee britches and eastern walking shoes, one of the miners may have decided that here was a dude who could be filled full of tall tales about western desperadoes. If, indeed, Charles Lummis was the object of a practical joke, then the joke has been replayed on everyone who has read his book in the almost one hundred years since its publication.

A second possible explanation is that Lummis wrote the account by trying to remember what he had seen in Golden, and then added information that he had heard in later years that seemed to fit in with the story; but, in fact, the story did not fit together at all. A critical bit of evidence in trying to understand what happened is Lummis' comment regarding Leyba that "I had many very entertaining talks with him without at all suspecting who he was."²⁷

24. Las Vegas *Daily Optic*, April 6, 1882.

25. "Records of Convicts, New Mexico Penitentiary," State Records Center and Archives, Santa Fe. Marino Leyba was convict no. 116.

26. Lummis, *Tramp Across the Continent*, 125-28.

27. Lummis, *Tramp Across the Continent*, 125-26.

Consideration should also be given to the possibility that Lummis simply wanted to tell a good story. At least, this was the opinion of the editor of the *Albuquerque Evening Democrat*, who wrote the following lines on March 21, 1885, after reading Lummis' article about Albuquerque in the *Los Angeles Times*: "Young Lummis impressed a *Democrat* reporter while here as being a habitual and stalwart liar who relied mainly on imagination for the facts of his long and nonsensical tramp across the continent, and his newspaper letters bristling with falsehoods have confirmed this impression."²⁸

Marino Leyba was something of a model prisoner after his transfer to the territorial prison on March 2, 1886. At one point he saved the life of the warden by warning him that a convict named White had stolen a butcher knife and intended to murder him.

In the summer of 1886, a strange thing happened that would indirectly lead to the violent death of several more people, including Marino Leyba. Pablo Analla, whose horse had been stolen by Leyba in 1881, and who had joined the posse that captured Leyba, and whose testimony had helped send Leyba to prison, went to Governor Edmund G. Ross in Santa Fe and told him that he had "become satisfied that he was mistaken and misinformed as to the real facts of the alleged crime," and that there were mitigating circumstances connected with the taking of his horse that excused Leyba, if they did not entirely exonerate him. As a consequence, Marino Leyba was pardoned by Governor Ross on July 21, 1886.²⁹

Leyba soon resumed a life of crime. By early 1887, he was terrorizing villages up and down the east side of the Sandia and Manzano Mountains. On March 4, three men were murdered and robbed at the Lackey Ranch near Chilili in the Estancia Valley, and the ranch house was burned down with Joseph Lackey's body inside. Santa Fe County Sheriff Chavez thought he saw the work of Marino Leyba in this crime, and he began sending out deputies to track down the outlaw.³⁰

28. *Albuquerque Evening Democrat*, March 21, 1885. This article, entitled "A Talented Young Liar," was "discovered" by Howard Bryan and was reprinted in his column in the *Albuquerque Tribune* in 1984. Lummis' abusive article about Albuquerque appeared in the *Los Angeles Times*, March 15, 1885.

29. Letter from Analla to Ross, dated July 26, 1886, microfilm reel 101, frames 322-23, and notes by Ross, microfilm reel 102, frames 938-39, Territorial Archives of New Mexico, State Records Center and Archives, Santa Fe.

30. The last month of Leyba's life is described in detail in the *Santa Fe Daily New Mexican*, March 30, 1887. Joseph Lackey was a sheep rancher; information on the disposition of his estate can be found in Supreme Court Case File No. 377, State Records Center and Archives, Santa Fe.

On March 29, 1887, Deputy Sheriffs Joaquin Montoya and Carlos Jacome spotted Leyba in the foothills of the Sandias, about six miles southwest of Golden. Jacome, who was well acquainted with the outlaw, went forward to greet him and engage him in conversation. When Montoya appeared, Leyba became suspicious, dismounted, and placed his right hand on his .45 caliber Colt revolver, which was under his belt rather than in a holster (the *Santa Fe Daily New Mexican* described this as "the most approved frontier style"). Montoya extended his right hand, but Leyba offered his left, whereupon Montoya said, "Don't draw your gun; give me your right hand; we shall not harm you, but you must consider yourself our prisoner." At this, Leyba cursed Montoya and drew his revolver, and the three men fired almost simultaneously. Leyba's bullet grazed Montoya's head and cut a hole in his hat, but Montoya's bullet pierced Leyba's brain and the outlaw was killed instantly. The deputies carried the body to the railroad station at Cerrillos and then made haste to inform Sheriff Chavez in Santa Fe.

Leyba's wife went to Cerrillos and begged the deputies to let her take his body, but they refused and put it on the eastbound train to be shipped to Santa Fe. The corpse was taken to the jail and laid out on a table, where 2,000 people came to view it during that day. In a final irony, the man who killed Colonel Potter was buried in an unmarked grave in potter's field.³¹

A curious postscript to all of this is Charles F. Lummis' account of Marino Leyba's death, published in *A Tramp Across the Continent* in 1892. Lummis' description is again at variance with other contemporary accounts and continues to reveal a strange kind of hero worship:

A Mexican whom he [Leyba] had treated with great generosity, and upon whose friendship he relied, was bribed to kill him, or to assist a deputy sheriff in doing so. The precious couple met Marino on the forest road a few miles from Golden, and the always alert outlaw challenged them. "What? Don't you know me?" cried the false friend, riding up with a cordial smile and extending his hand. As Marino grasped it, the traitor jerked him forward and the cowardly officer put a bullet through Marino's brain from behind. Had the heavy ball gone through the heart instead of instantly paralyzing the great nerve-center, there is no doubt that a

31. *Santa Fe Daily New Mexican*, March 30, 1887. The newspaper reference to potter's field comes from Matthew 27:7, which describes how Judas returned the thirty pieces of silver to the high priests, and then hanged himself. The priests spent the money to buy a field from which potters had dug clay, so that the place could be used as a graveyard for strangers, paupers, and criminals.

man of Marino's force of will would have slain both his murderers before dying himself; and they knew that no mere surprise, however complete, could make them a match for that lightning marksman. Only some such cowardly trap as theirs could have conquered him. Marino was dearly loved by the common people, to whom he was a very Robin Hood, fleecing only the rich and dividing with the humble; but he was a terror to that whole section, and his death was a relief to the public.³²

32. Lummis, *Tramp Across the Continent*, 127-28. Howard Bryan wrote four articles on Marino Leyba that were published in the *Albuquerque Tribune*, June 21, 1954, June 16, 1955, January 9, 1956, and January 12, 1956. The last of these articles contains a photograph of a weathered wooden cross that reportedly marked the site where Leyba was killed. The cross was about six miles southwest of Golden, New Mexico, just east of where State Highway 14 crosses San Pedro Creek.